

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Amendment of the Commission's Rules to)
Establish Part 27, the Wireless)
Communications Service ("WCS"))

GN Docket No. 96-228

DEC 4 - 1996

To: The Commission

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Comments of Pocket Communications, Inc.

Pocket Communications, Inc. ("Pocket") respectfully submits these comments in response to the Notice of Proposed Rulemaking ("NPRM") in the above-captioned matter.

The FCC's mandate to make the 2.3 GHz spectrum available to the public presents a significant opportunity to advance the public interest. As one of the C block PCS licensees, Pocket is uniquely situated to appreciate the Commission's important role in serving the public interest through its spectrum policy. In auctioning broadband PCS spectrum, the Commission was able to open the wireless personal communications market to new as well as small businesses, and such companies are currently on the brink of building out their systems and are beginning to offer consumers new services and lower prices. It is important that the Commission's policy with respect to the 2.3 GHz band complement, rather than undo the achievements to date.

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List A B C D E

I. THE 2.3 GHZ BAND SHOULD NOT BE CONVERTED PRIMARILY INTO ANOTHER COMMERCIAL, WIRELESS, TELECOMMUNICATIONS SERVICE.

While the Commission should allow providers in the 2.3 GHz band considerable leeway with respect to their service offerings, the Commission is in a position to encourage use of the band to provide innovative, new, and different services by shaping the size of the spectrum blocks and geographic licenses. If the Commission were simply to duplicate its efforts in other spectrum blocks, the ultimate result would be that consumers would suffer. Many of the new businesses whose participation the Commission ardently encouraged would falter, and the entrenched telecommunications giants would be the only companies able to survive. The auction of the 2.3 GHz band is required to be consistent with Section 309(j) of the Communications Act, 47 U.S.C. § 309(j)(3), which requires the Commission to advance the development of new technologies for the service of the public.^{1/} The October 25, 1996 letter from the House Commerce Committee to Chairman Hundt stresses this point: the auction of the 2.3 GHz band should “stimulate the development of new and creative spectrum-dependent technologies.”

The Commission accordingly should structure its allocation of the 2.3 GHz band to encourage the provision of Internet and educational applications, as well as medical and public safety uses. To this end, small spectrum blocks should be used, so that small businesses can realistically build out service and spectrum is used most efficiently. Small blocks of spectrum of no more than 10 MHz would be the most flexible, permitting operators to bid for no more than the amount of spectrum they need; operators seeking to offer more extensive or complex (or even PCS-type) service could bid for and aggregate several such blocks, and also could tailor the

^{1/} Omnibus Consolidated Appropriations Act, 1997, P.L. 104-208, 110 Stat. 3009, § 3001(a)(2) (1996) (emphasis added).

amount of desired spectrum to different geographic markets. In addition, the Commission should avoid nationwide and MTA licensing. The recently released “International Survey of Spectrum Assignment for Cellular and PCS,” sponsored by the Wireless Telecommunications Bureau, concluded that the use of regional as opposed to national licensing was an essential factor in the success of auctions internationally, as it “allowed bidders to make distinctions between regions, both in terms of their aggregation strategies and in terms of price.”^{2/} Moreover, as the Commission noted with respect to PCS service, “a regulatory structure with many providers, and a large number of small service areas, is likely to promote competition, accelerate deployment, encourage diverse services, and promote economic opportunities.”^{3/} BTA licenses provide the best economic incentives for new services, as they allow operators to focus on specific communities. In addition, public safety concerns are best addressed on such a local level, and thus to serve public safety interests the Commission must make BTA licenses available. Partitioning and disaggregation, while beneficial to businesses seeking to enter specific markets or provide niche services, do not provide such businesses with the opportunity to control the terms of their entry and become primary market players.

Smaller spectrum blocks and geographic license areas are also consistent with Section 309(j)'s emphasis on promoting economic opportunity for small businesses, rural businesses, and minority- or woman-owned businesses. Experience with the broadband PCS C block has demonstrated that raising capital to bid on BTA licenses for 30 MHz of spectrum is a monumental

^{2/} “International Survey of Spectrum Assignment for Cellular and PCS,” by Martin Spicer, at 19 (September 1996).

^{3/} Second Report and Order, 8 FCC Rcd 7700, Appendix C (1993).

task. Clearly, insofar as small businesses are concerned, smaller license areas and smaller spectrum blocks are more realistic and ultimately increase opportunities.

It is also important that the Commission preserve the CMRS spectrum cap with respect to CMRS services provided on the 2.3 GHz spectrum. NPRM, ¶ 25. If the spectrum cap were not applied, the biggest players would utilize this spectrum to increase their market volume, making it even more difficult for small businesses offering similar services to compete. Section 309(j)(3)(B) requires that the Commission seek to avoid excessive concentration of licenses; this is best achieved by excluding those with significant amounts of spectrum from this auction. Furthermore, these established players would be likely to use this spectrum simply to complement or expand on the service they already offer in other spectrum blocks.^{4/} Innovation is more likely to come from new market entrants who enter the market with new ideas. Moreover, the Omnibus Consolidated Appropriations Act, 1997 (the “Appropriations Act”) states that the Commission must seek to promote spectrum efficiency.^{5/} It would be more efficient if licensees controlling large blocks of spectrum, i.e., 45 MHz, were compelled to develop the technological capacity to offer additional services within that amount of spectrum rather than being permitted to simply gobble up more spectrum in order to provide such services.

II. THE COMMISSION SHOULD ALLOCATE A SIGNIFICANT PORTION OF THE 2.3 GHz BAND TO PUBLIC SAFETY USES.

^{4/} The Commission should also impose strict buildout requirements to ensure that large, entrenched companies do not bid on the 2.3 GHz spectrum simply to limit competition from new players in their markets.

^{5/} § 3001(b)(1).

The Appropriations Act provides that in reallocating the 2.3 GHz band, the Commission should take into account the needs of public safety radio licensees.^{6/} Ensuring that a significant (if not primary) portion of the 2.3 GHz band is available to public safety users would not only be consistent with the Appropriations Act, it also would provide such operators with sorely needed spectrum to provide important public services. As the Commission notes in the NPRM, ¶ 21, one of the primary needs identified by public safety users is “additional spectrum.” This is especially true given the requirement that most microwave licensees, many of whom are public safety operators, relocate from broadband PCS spectrum where they currently operate.^{7/} Yet despite repeated requests, the Commission has decided against allocating spectrum specifically for public safety users, indicating that the needs of such users would be taken up at a later time.^{8/} If public safety services to the public are to continue on a uninterrupted basis, the Commission should recognize that such time has arrived, and that a stable and primary allocation of spectrum must be available to public safety users displaced from other spectrum^{9/} or who wish to offer new services to the public.

Permitting public safety users to lease spectrum from commercial users as suggested in the NPRM, ¶ 22, cannot offer the same critical stability to public safety systems as a permanent

^{6/} § 3001(b)(2).

^{7/} See, generally, WT Docket No. 95-157.

^{8/} See, e.g., Memorandum Opinion and Order, 9 FCC Rcd 4957, ¶ 90 (1994); Second Report and Order, 11 FCC Rcd 624 ¶ 27 (1995).

^{9/} Making specific spectrum available for such users would also ease the burden on PCS operators seeking to relocate public safety microwave licensees, and thus would facilitate earlier roll out of PCS service to the public.

allocation. The Commission has previously recognized that an interruption in public safety use -- as might occur when a CMRS provider cancels its contract with a public safety service -- would not be in the public interest.^{10/} Even imposition of financial penalties would likely be insufficient to ensure that commercial providers continue to make their services available for public safety needs, because the amounts that may be earned from other commercial users could far outweigh any such penalties. And imposing public safety obligations on commercial users, NPRM ¶ 21, is precisely contrary to the spirit of a new Wireless Communication Service in which operators are bound only by international requirements and coordination. NPRM, ¶ 9.

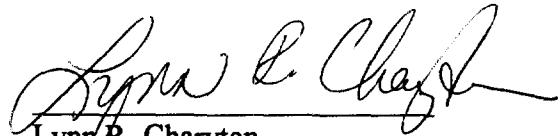
While the Appropriations Act requires that the Commission assign the use of the 2.3 GHz band by competitive bidding, its admonition to address the needs of public safety users suggests that Congress understood that the Commission might have to depart from its regular auction process - at least in part - to satisfy the needs of the public safety community. The October 25, 1996 House Commerce Committee letter stresses the need for spectrum to be allocated for public safety, and stressed that the Commission "pay particular attention" to the immediate needs of public safety users, and reminds the Commission that it is forbidden from making its spectrum allocation decisions based "solely or predominantly on the expectation of Federal auction revenues." The letter suggests that the Commission should attempt to shape any auction of the 2.3 GHz spectrum in keeping with these concerns, suggesting that allocating part of the available 2.3 GHz spectrum to public safety users should be consistent with the Appropriations Act.

^{10/} First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8825, ¶ 68 (1996).

CONCLUSION

As described above, the Commission should design the allocation and auction of the 2.3 GHz band to serve significant public interest goals.

Respectfully submitted,



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On behalf of Pocket Communications, Inc.

December 4, 1996

CERTIFICATE OF SERVICE

I, Stephen L. Peebles, hereby certify that I have this 4th day of December, 1996, caused to be hand delivered the foregoing Comments of Pocket Communications, Inc., as shown below.


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